

Congress of the United States
Washington, DC 20515

June 29, 2018

Dear Secretary Azar and Administrator Verma:

Thank you for soliciting public comments on wage index disparities in the FY 2019 Inpatient Prospective Payment System (IPPS) proposed rule (CMS-1694-P). This is an issue of vital importance to hospitals located in the districts we represent and our constituent Medicare beneficiaries they serve.

In creating the Prospective Payment System, Congress's intent was to "reform the financial incentives hospitals face, promoting efficiency in the provision of services by rewarding cost/effective hospital practices."¹ Unfortunately, CMS's implementation of the Medicare wage index has been contrary to this goal. Many hospitals that are efficient in keeping their labor costs low continue to see their wage index drop, which drives a reduction in payments and thereby creates additional pressure to exert even tighter control over costs. On the other hand, hospitals with high labor costs over the national average have seen their wage index and reimbursement grow sharply over the years. MedPAC describes this problem as circularity. MedPAC explains, "[t]he current system relies solely on hospital-reported data and hence is prone to the problem of circularity."²

MedPAC, Acumen, and the Institute of Medicine have all studied the wage index and the disparities it creates, each recommending significant changes to the system. Years have passed since the last study and the problem has only grown. In 2006, the highest wage index in the continental United States was roughly twice as much as the lowest, but today the highest wage index is almost three times the lowest.³ This gap will only continue to grow, threatening access to care in significant portions of the country unless CMS makes changes in its implementation of the wage index under 42 U.S.C. § 1395ww(d)(3).

In administering the wage index, federal law requires the Secretary to adjust the "proportion" of IPPS payments attributable to "wages and wage related costs" for "area differences

¹ H.REP. No. 25, 98th Cong., 1st Sess. 1, 132 (1983), reprinted in 1983 U.S.C.C.A.N. 219, 351 ("House Report"); see also S.REP. No. 23, 98th Cong., 1st Sess. 1, 53 (1983), reprinted in 1983 U.S.C.C.A.N. 143, 193 ("Senate Report") ("[PPS amendments] are intended to create incentives for hospitals to operate in a more efficient manner. . .").

² MedPAC, June 2007 Report to Congress: Promoting Greater Efficiency in Medicare. *Chapter Six: An Alternative Method to Computing the Wage Index*.

³ Compare Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates; Final Rule, 70 Fed. Reg. 47278, *et. al* (Aug. 12, 2005) with Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Proposed Policy Changes and Fiscal Year 2019 Rates; Proposed Rule, 83 Fed. Reg. 20164, *et. al* (May 7, 2018).

in hospital wage levels.”⁴ This calculation must be updated yearly on the “basis of a survey” of wage related costs.⁵ Beyond these basic requirements, “no particular methodology for developing the indices [was] specified [by Congress].”⁶ Thus, there is a broad statutory basis for administrative reform. As recently noted by the Sixth Circuit, “[t]he legislative history confirms that Congress intended to grant the Secretary exceptionally broad discretion to determine the wage index.”⁷ Likewise, the Department has consistently taken a broad view of its statutory authority under § 1395ww(d)(3)(E).⁸

Hospitals are often the lifeblood of rural America and small towns and cities. They provide necessary and critical healthcare access to constituents in our districts. When a hospital closes, our Medicare beneficiaries most often drive long distances to access care. Additionally, hospitals are often the largest employers in many areas we represent and are a vital component to attracting new economic development to many areas of our country that have been economically depressed in recent years. Unless substantial changes are made by CMS in how it administers § 1395ww(d)(3), the wage index problem poses an existential threat to these hospitals and communities we represent.

We urge the Department to take seriously the wage index disparities identified by this comment period and revisit how § 1395ww(d)(3) is being implemented to address this important issue.

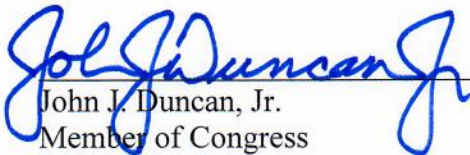
Sincerely,



Bradley Byrne
Member of Congress



Diane Black
Member of Congress



John J. Duncan, Jr.
Member of Congress



Terri Sewell
Member of Congress

⁴ See 42 U.S.C. § 1395ww(d)(3)(E)(i).

⁵ See *id.*

⁶ H.R. Rep. No. 100-495, at 527 (1987), reprinted in 1987 U.S.C.C. 2313-1245, 2313-1267.

⁷ *Atrium Med. Center v. Dept. Of Health & Human Serv.*, 766 F. 3d 560, 568 (2014).

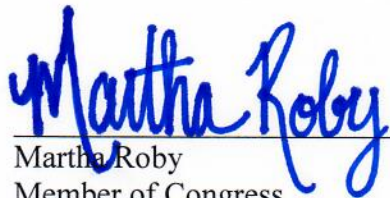
⁸ See, e.g. Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates, 69 Fed. Reg. 49110 (Aug. 11, 2004) (noting some commenters' objection to the establishment of an imputed rural floor as requiring legislative action and responding that “the Secretary has broad authority under section 1886(d)(3)(E)”).



Bruce Westerman
Member of Congress



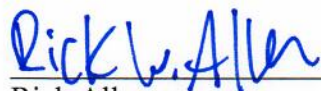
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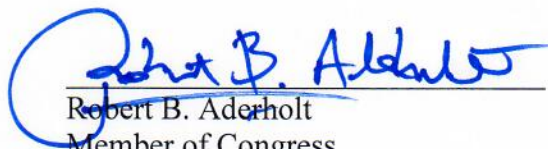
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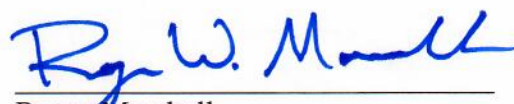
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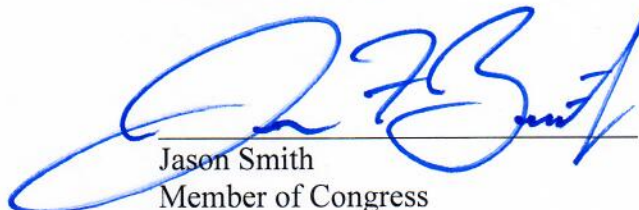
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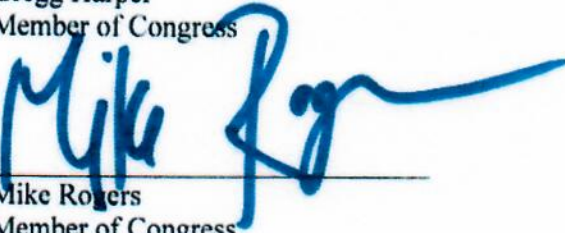
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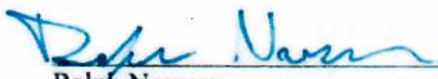
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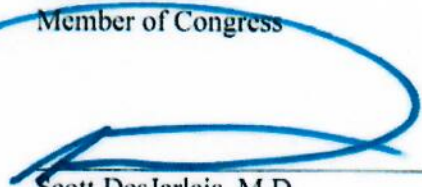
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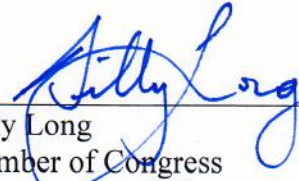
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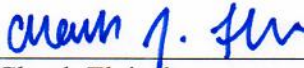
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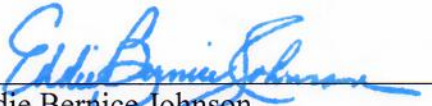
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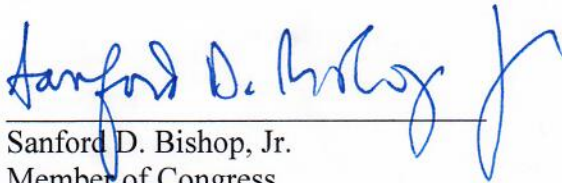
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